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13
14 IN THE UNITED STATES DISTRICT COURT
15
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 JULIO CHAVEZ-LUCATERO,
21 DENNISE CASTRO
22 DESTANEY WALKER, ET. AL.

23 Defendants.

24 CASE NO. 1:20-CR-00062 NONE-SKO

25 STIPULATION TO CONTINUE STATUS
26 CONFERENCE AND ORDER

27 Date: May 4, 2020
Time: 1:00 p.m.
Honorable Sheila K. Oberto

28 The United States of America, by and through MCGREGOR W. SCOTT, United States
Attorney, and KATHLEEN A. SERVATIUS, Assistant United States Attorneys, and the defendants, by
and through their respective attorneys of record, hereby stipulate to continue the status conference in this
case from May 4, 2020 until August 31, 2020 at 1:00 p.m.

29 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the
30 Eastern District of California scheduled to commence before June 15, 2020. This General Order was
31 entered to address public health concerns related to COVID-19.

32 Although the General Order addresses the district-wide health concern, the Supreme Court has
33 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
34 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
35 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no

1 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
2 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
3 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either
4 orally or in writing").

5 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
6 and inexcusable—General Orders 6111, 612, and 617 require specific supplementation. Ends-of-justice
7 continuances are excludable only if "the judge granted such continuance on the basis of his findings that
8 the ends of justice served by taking such action outweigh the best interest of the public and the
9 defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
10 "the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
11 ends of justice served by the granting of such continuance outweigh the best interests of the public and
12 the defendant in a speedy trial." *Id.*

13 The General Order excludes delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code
14 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
15 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
16 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
17 following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
18 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
19 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
20 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
21 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

22 In light of the societal context created by the foregoing, this Court should consider the following
23 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
24 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date
25 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
26 pretrial continuance must be "specifically limited in time").

27 The parties request that time be excluded between May 4, 2020 and August 31, 2020 for the
28 following reasons: the defendants need additional time to review the discovery, consult with their

1 clients, and conduct further investigation. The case involves several seizures, approximately 500 pages
2 of discovery, and discovery in the form of several gigabytes. Supplemental discovery consisting of
3 digital phone downloads is being prepared. The proposed status conference date represents the earliest
4 date that all counsel are available thereafter, taking into account counsels' schedules, defense counsels'
5 commitments to other clients, and the need for preparation in the case and further investigation. In
6 addition, the public health concerns cited by General Order 611, 612, and 617 and presented by the
7 evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because counsel
8 or other relevant individuals have been encouraged to telework and minimize personal contact to the
9 greatest extent possible. It will be difficult to avoid personal contact should the hearing proceed.

10 The parties further believe that time should be excluded, in that failure to grant the requested
11 case schedule would unreasonably deny the defendants continuity of counsel, and unreasonably deny
12 both the defendants and the government the reasonable time necessary for effective preparation, taking
13 into account the parties' due diligence in prosecuting this case. 18 U.S.C. Section 3161(h)(7)(B)(iv).
14 Based on the above-stated findings, the ends of justice served by the schedule as requested outweigh the
15 interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial
16 Act. Therefore, the parties request that the Court exclude the time until the new trial date from
17 calculations under the Speedy Trial Act.

18 Dated: April 26, 2020

MCGREGOR W. SCOTT
United States Attorney

20 */s/ Kathleen A. Servatius*
21 KATHLEEN A. SERVATIUS
22 Assistant United States Attorney

23 Dated: May 1, 2020

/s/ Chris Loethen
24 Attorney for defendant Julio Chavez

25 Dated: April 26, 2020

/s/ Kevin P. Rooney
26 Attorney for Defendant Dennise Castro

27 Dated: April 26, 2020

/s/ Anthony Capozzi
28 Attorney for Defendant Destaney Walker

ORDER

IT IS HEREBY ORDERED that the status conference in this case be continued from May 4, 2020, until August 31, 2020, at 1:00 p.m.

4 IT IS FURTHER ORDERED THAT the ends of justice served by the schedule set forth herein as
5 requested outweigh the interest of the public and the defendants in a trial within the original date
6 prescribed by the Speedy Trial Act for the reasons stated in the parties' stipulation. For the purpose of
7 computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must
8 commence, the time period of April 20, 2020 and August 31, 2020, inclusive, is deemed excludable
9 pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) because it results from a continuance granted by the Court
10 at the parties' request on the basis of the Court's finding that the ends of justice served by taking such
11 action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: May 1, 2020

181 Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE